

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1917.

EMMA GOLDMAN and ALEXANDER  
BERKMAN,  
Plaintiffs-in-Error,  
against

THE UNITED STATES OF AMERICA,  
Defendant-in-Error.

No. 702.

**PETITION FOR REHEARING**

HARRY WEINBERGER,  
Attorney for Emma Goldman and  
Alexander Berkman,  
Plaintiffs-in-Error.

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*To the Honorable Supreme Court of the United  
States:*

Now comes Emma Goldman and Alexander Berkman, plaintiffs-in-error, and petition for a limited rehearing in this case, and for grounds of this petition say:

The opinion and judgment of this Court rendered on the 14th day of January, 1918, affirmed the judgment below in this case. The Court, though stating that plaintiffs-in-error were charged with violating Sections 37 and 332 of the Criminal Code and the Selective Draft Law, wholly overlooks and gives no effect in its opinion to Section 332. *There is only one count in the indictment*, and the statutes violated, as stated in the indictment, are "Sections 37 and 332, U. S. C. C., and Section 5 of the Act of May 18, 1917."

Section 332 absolutely requires, for the purpose of a conviction or for the stating of a crime in an indictment, the proof and allegation of the guilt of a principal and the allegation and proof that plaintiffs-in-error were the cause of said guilt. If Section 332 had been emitted, the indictment would have been solely a conspiracy indictment. *But Section 332 was not omitted from the indictment.* Some effect must be given to this section. Ignoring or overlooking Section 332 does not answer the contention of the plaintiffs-in-error in reference thereto, and I respectfully ask that I be allowed to reargue this contention. The calling of the indictment a conspiracy indictment does not make it one.

To properly state the crime in one count, inasmuch as three statutes are alleged to have been violated, the indictment should have read that plaintiffs-in-error conspired to become and did become accessories before the fact, and that the fact did happen that a principal failed to register because of the acts of the plaintiffs-in-error. The indictment should have alleged the person or persons who failed to register. The evidence should have shown it was a fact. The plaintiffs-in-error therefore contend that the indictment does not state an offense and the evidence does not prove the crime charged.

I respectfully submit that the Court in its opinion mistakes my argument entirely, when it states that I contended that a crime of conspiracy is not committed if the illegal end was not accomplished, even if overt acts are proven. I respectfully contend and desire to reargue, so as to show more fully and plainly that the indictment was not a conspiracy indictment but one charging plaintiffs-in-error as principals (plaintiffs-in-error being charged as accessories). And it is because of the

fact that the indictment is not a conspiracy indictment that I contend and believe that there must be an accomplishment of the illegal end before the crime can be considered proved or an indictment considered sufficient as an allegation of a violation of Section 332. I believe that this kind of an indictment, with one count, has never been before this Court. I would like, if a rehearing is granted, to fully exhaust the authorities, so that the question may be properly settled by this Court.

I respectfully submit that the Court erred in not considering my contentions concerning the abuse of discretion by the Court below in ruling on an application to postpone the trial, which was not referred to in my assignment of error.

I respectfully submit, when it is considered that the plaintiffs-in-error were immediately sent to prison from the court room at the end of their trial, which was contrary to the unvarying practice in all United States District Courts, and the Trial Judge refused to grant a stay or writ of error pending appeal, so that in order to obtain plaintiffs-in-error's release from prison the application for a writ of error and the filing of the assignments of error had to be done hurriedly and without the stenographic record of the trial, yet the error is so plain and the injustice so great that under the decisions of this Court, which I would fully urge on a reargument, it was the duty of the Supreme Court to consider this apparent error, though not mentioned in the assignment of error (see *Weems v. U. S.*, 217 U. S., 349; *Columbia Heights Realty Co. v. Rudolph*, 217 U. S., 347), and to reverse the conviction because of the abuse of discretion by the Court below in refusing an application to postpone the trial in order for plaintiffs-in-error to properly prepare, and because plaintiff-in-error Alexander

Berkman, shown by a doctor's certificate submitted to the Trial Court, was suffering physical agony when forced to trial.

WHEREFORE, I respectfully pray that the petition for a limited rehearing should be granted.

A copy of this petition has been mailed to counsel for the defendant-in-error.

Respectfully submitted,

HARRY WEINBERGER,  
Attorney for Emma Goldman and  
Alexander Berkman,  
Plaintiffs-in-Error.

I hereby certify that in my opinion the foregoing petition is well founded in law and fact and not made for the purpose of delay.

HARRY WEINBERGER,  
Attorney for Emma Goldman and  
Alexander Berkman,  
Plaintiffs-in-Error.